No. 95-1527

Supreme Court, U.S.
FILED
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In The
Supreme Court of the United States

October Term, 1995

BRANDON JOSHUA HANEY, BY NEXT FRIEND, GUARDIAN OF HIS PROPERTY, MARGEAN HANEY; THE ESTATE OF DANA SHAUN HANEY, BY MARGEAN HANEY AND ADMINISTRATRIX,

Petitioners,

vs.

CITY OF CUMMING; AND WAYNE LINDSEY, IN HIS CAPACITY AS CHIEF OF POLICE FOR THE CITY OF CUMMING, CUMMING CITY POLICE DEPARTMENT; SHERIFF'S DEPARTMENT OF FORSYTH COUNTY; ROSLYN HAYGOOD, D.O. DAMPIER; JEFF LOWE; FORSYTH COUNTY; WESLEY WALRAVEN, IN HIS INDIVIDUAL CAPACITY AND IN HIS CAPACITY AS SHERIFF OF FORSYTH COUNTY; RUSSELL MATTHEWS; AND RUSTY GRIFFIN,

Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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70 pp

QUESTIONS PRESENTED FOR REVIEW

1. Certiorari should be granted to clarify the duties of jailers under the Eighth and Fourteenth Amendments to the United States Constitution and under 42 U.S.C. §1983 to provide necessary medical care and to take preventive action when a prison arrestee threatens suicide and to reverse the Eleventh Circuit's clearly erroneous holding that jailers are not responsible for meeting the psychiatric and medical needs of seriously ill prisoners.

2. Certiorari should be granted to resolve the conflict among the First, Fifth, Eighth, and Eleventh Circuits relative to the duty of jailers to provide for the serious medical and psychological needs of the inmates in their custody.

PARTIES TO THE PROCEEDING

Petitioner is Margean Haney. Mrs. Haney brings this case in her capacity as next friend and Guardian of the Property of her minor great-grandson, Brandon Joshua Haney and in her capacity as Executrix of The Estate of Dana Shaun Haney. She was the Plaintiff in the district court proceedings and Appellee Cross-Appellant before the Unites States Court of Appeals for the Eleventh Circuit.

Respondent, City of Cumming, a municipality in the State of Georgia, was a defendant in the district court and a Cross-Appellee before the United States Court of Appeals for the Eleventh Circuit.

Respondents, Wayne Lindsey and Roslyn Haygood were employees of the City of Cumming who were defendants in the district court.

Respondent Forsyth County is a County in the State of Georgia and was a defendant in the district court and Appellant-Cross-Appellee before the United States Court of Appeals for the Eleventh Circuit.

Respondent D. O. Dampier and Jeff Lowe were employees of the Forsyth County Sheriff's Department and were defendants in the district court.

Respondent Wesley Walraven was the Sheriff of Forsyth County and was a defendant in the district court and an Appellant-Cross-Appellee before the United States Court of Appeals for the Eleventh Circuit.

Respondents, Russell Matthews, and Rusty Griffin were employees of the Forsyth County Sheriff's Department and were defendants in the district court and were Appellants-Cross-Appellees before the United States Court of Appeals for the Eleventh Circuit.

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No.

Supreme Court of the United States

October Term, 1995

Brandon Joshua Haney, by next friend, Guardian of his Property, Margean Haney; The Estate of Dana Shaun Haney, by Margean Haney as Administratrix,

Petitioners,

vs.

City of Cumming; and Wayne Lindsey, in his capacity as Chief of Police for the City of Cumming, Cumming City Police Department; Sheriff's Department of Forsyth County; Roslyn Haygood, D. O. Dampier; Jeff Lowe; Forsyth County; Wesley Walraven, in his individual capacity and in his capacity as Sheriff of Forsyth County; Russell Matthews; and Rusty Griffin,

Respondents.

Petition for Writ of Certiorari to the Unites States Court of Appeals for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

On November 27, 1995, the Unites States Court of Appeals for the Eleventh Circuit issued its opinion in Eleventh Circuit Case No. 93-9183 reversing the decision of the United States District Court for the Northern District of Georgia, Atlanta Division. The opinion of the Eleventh Circuit was published at 69 F.3d 1098. (1a) The opinion of the District Court, dated August 23, 1993, and Docketed August 24, 1993, was not published. (16a)

STATEMENT OF JURISDICTION

Petitioners seek review of the opinion of the United States Court of Appeals for the Eleventh Circuit and its judgment of November 27, 1995. That judgment, reversed the lower court's denial of summary judgment sought by Respondents Russell Matthews and Rusty Griffin, and dismissed the plaintiff's claims against Respondents Griffin and Matthews under the Qualified Immunity Doctrine. Petitioner invokes the certiorari jurisdiction conferred on this Court by 28 U.S.C. § 1254(1).

STATUTE INVOLVED

42 U.S.C. § 1983 provides:

§ 1983. Civil action for deprivation of rights.

> Every person who, under color or any statute, ordinance, regulation, custom, or usage, or any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

This civil rights action stems from the suicide death of nineteen year old Dana Shaun Haney (hereinafter referred to as "Haney") in the City of Cumming Jail on April 21, 1989. As a result of the suicide, Margean Haney, as next friend of Haney's minor son, Brandon Joshua Haney, and as Administratrix of Haney's estate (collectively hereinafter "Plaintiffs"), brought suit alleging civil rights violations pursuant to 42 U.S.C. §1983, the Eighth Amendment and the Fourteenth Amendment, and state law issues. In the context of this Application for Certiorari, plaintiffs contend that defendants Russell

Matthews and Rusty Griffin are not entitled to qualified immunity and are liable to the Petitioner under 42 U.S.C. §1983 because they were deliberately indifferent to Haney's serious need for psychiatric care and protection from self-inflicted harm in violation of Haney's civil rights guaranteed under the Eighth and Fourteenth Amendments to the Constitution of the United States while Haney was in their custody.

On April 20, 1989, police officers for the City of Cumming, Georgia, traveled to the local Days Inn hotel in response to a telephone call from the hotel manager, advising them that a room was being occupied by persons who had failed to pay for it. At the hotel, the police arrested Dana Shaun Haney and Jacqueline Hunt for theft of services. Both women were taken to the city jail where they were booked, during which time Hunt retrieved fifteen Xanax pills from her purse and swallowed them. Haney was also placed on "hold" for violation of probation for a prior offense. Later in the afternoon, Police Chief Wayne Lindsey of the city police transferred Haney and Hunt to the Forsyth County jail. While there, Hunt passed out and was taken to a local hospital. The county deputies placed Haney in a detoxification cell. Throughout the afternoon and evening, jailers Jimmy Waters and Jeff Lyles checked on Haney every fifteen to twenty minutes. Haney was responsive to them, although she did appear to be intoxicated. Her speech was slurred and she was unsteady on her feet.

During the night in jail, Ms. Haney's medical condition was so poor that the Jailers regularly took her blood pressures.

The next morning, Russell Matthews, Chief Criminal Investigator for the Forsyth County Sheriff's Department, arrived at the County jail to speak with Haney. Matthews was conducting an investigation into local physicians who reportedly had written excessive amounts of prescription drugs and thought Haney might have some useful information. The two spoke for approximately thirty to forty five minutes, during which time Haney expressed deep concern over Hunt's condition. After making inquiries of the jailers, Matthews informed Haney that Hunt was in intensive care at the hospital and could not receive any visitors.

Upon the conclusion of her interview with Matthews, Haney was returned to the detoxification cell. Shortly thereafter, officer Rusty Griffin, who was on duty at the jail that morning, found Haney standing on the toilet in her cell and noticed that she had torn up her mattress and pillow. When Griffin questioned her about her conduct, Haney replied that she "might as well kill" herself. Griffin then immediately located Matthews and brought him back to the cell to observe Haney, who was found crying in the corner. In a 10:30 a.m. entry in the Jail Log, Griffin wrote "R. Matthews meeting with Haney in the conference room. She has been raising hell in tox -- tore-up mattress and claiming that she was going to kill herself." At about 11:00 a.m.,

Jailer, Keith Dampier, came on duty and Griffin told him to keep an eye on Haney because she was still considered intoxicated. Matthews claims that after he and Haney spoke for a while, she assured him that she would behave, but told him she wanted to be taken back to the Cumming city jail. Haney called her aunt, Lisa Addis, and told her she was in trouble again and that she was in jail. Addis noted that Haney's speech was slow and somewhat slurred. Matthews and the county deputies made the necessary arrangements, and Haney was transferred to the city jail shortly after noon.

Neither Matthews, nor Griffin informed the transporting officer, Jeff Lowe, or the officers at the city jail that Haney had threatened suicide. Haney was placed in an unsupervised cell and the jail doors were closed.

A few minutes later, a dispatcher at the city jail found Haney hanging from a horizontal bar in her cell with a sheet around her neck, dead.

After the completion of discovery, the Defendants filed motions for summary judgment. The district court granted summary judgment in favor of the City of Cumming and Chief Lindsey, finding they had no special reason for concern about Haney's condition when she was transferred to the city jail.

The district court denied summary judgment on qualified immunity in favor of Matthews and Griffin,

finding that Haney's constitutional rights at issue were clear at the time of her incarceration and that genuine factual questions remained regarding the propriety of their conduct. The district court, in comparing the conduct of Griffin and Matthews to that of Dr. Smith in *Waldrop v.* Evans, 871 F.2d 1030 (11th Cir. 1985) wrote:

> **D. Matthews**
>
> First, Matthews may not have "had knowledge" of the inmate's need for psychiatric care in the same way Dr. Smith did. The law does not hold a police officer to the same standard as a physician. However, a fact finder could reasonably conclude that a reasonable police officer, on being told of Haney's behavior, would have known she posed a substantial risk of suicide. Matthews's testimony that he was subjectively unaware of this is not relevant to the objective qualified immunity standard. *See Nicholson*, 918 F.2d at 147; *Waldrop*, 871 F.2d at 1036.
>
> Second, Matthews did act, in a sense. He gave Haney cigarettes and talked with her. But these actions may have been essentially diagnostic. Dr. Smith also diagnosed the inmate's

condition and concluded he did not need to contact a psychiatrist. Here, Matthews concluded that he did not even need to mention the issue to City jailers so they could take simple and routine precautions. Thus, Matthews's actions here may not have been sufficient to invoke qualified immunity.

Waldrop obviously does not directly control this case, because the Eleventh Circuit decided it after Haney's death. However, the same reasons that led the *Waldrop* court to deny summary judgment on the basis of qualified immunity require this Court to do the same here.

E. Griffin

Upon observing Haney's suicidal behavior, Griffin posted an officer to observe her and to ensure she did not harm herself, and reported the matter to a superior, Matthews. Matthews took action and assured Griffin that Haney would be "OK".

If Griffin did mention Haney's suicide threat, there would be no basis for finding him deliberately indifferent to

> Haney's needs. But a jury could conclude that a reasonable jailer in his position would have known he should mention suicide, not just disruptive activity. Thus, if the evidence shows that Griffin reacted only to Haney's destructiveness, not to her suicide threat, then Griffin could be liable.
>
> (32a - 33a)

Summary judgment was granted in favor of Forsyth County and Sheriff Walraven after the district court concluded that Griffin's training and the County's inmate transfer policy were not facially unconstitutional. Nevertheless, the district court denied summary judgment for Forsyth County and Walraven as to Matthews' training and discretion. Finally, summary judgment was granted in favor of all the Defendants on the state law claims after the district court found that the Plaintiffs had failed to adequately support such claims.

In its opinion below, the Eleventh Circuit reversed the trial court's denial of summary judgment in Matthews' and Griffin's in favor, holding:

> Both Matthews and Griffin are in a situation materially similar to the defendants in *Belcher*. ***They are not physicians and thus were not responsible for meeting the***

> ***psychiatric and medical needs of Haney at the time she was in the jail.*** Having found in Belcher that case law as of 1991 did not clearly establish constitutional or statutory rights in such a situation, it is clear that there also were no such rights at the time of Haney's 1989 suicide. Contrary to the district court's conclusion, neither *Waldrop* nor other case law clearly establish the law that is applicable to this case. Accordingly, the district court erred when it denied qualified immunity for Matthews and Griffin. ... For the reasons stated herein, the district court's denial of qualified immunity to Matthews and Griffin is REVERSED."

Haney v. City of Cumming, 69 F.3d at 1103. (Emphasis added.)

This application for certiorari is brought to seek a reversal of the Eleventh Circuit's dismissal of the claims against defendants Matthews and Griffin on the basis of qualified immunity and clearly to establish and to bring the protection of prisoner's medical and psychiatric needs of prisoners in the Eleventh Circuit within humane standards.

REASONS FOR GRANTING THE WRIT

I.

CERTIORARI SHOULD BE GRANTED TO CLARIFY THE DUTIES OF JAILERS UNDER THE EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND UNDER 42 U.S.C. §1983 TO PROVIDE NECESSARY MEDICAL CARE AND TO TAKE PREVENTIVE ACTION WHEN A PRISON ARRESTEE THREATENS SUICIDE AND TO REVERSE THE ELEVENTH CIRCUIT'S CLEARLY ERRONEOUS HOLDING THAT JAILERS ARE NOT RESPONSIBLE FOR MEETING THE PSYCHIATRIC AND MEDICAL NEEDS OF SERIOUSLY ILL PRISONERS.

Under the law as enforced by the Eleventh Circuit, it is now clear that a jailer has no constitutional duty to take any preventative actions to prevent a suicide by an arrestee who makes a suicide threat. Under the Circuit's rulings in this case, jailers are not physicians and, thus, are not responsible for meeting the psychiatric and medical needs of a detainee in jail. Under the Eleventh Circuit's strained interpretation of qualified immunity, a jailer on whose watch a suicide occurs, is wholly immunized from personal liability for ignoring the real, obvious, risks of suicide because the obligation to provide for a detainee's psychiatric and medical needs has never been "clearly established"

sufficiently to hold a jailer liable for failure to provide for a detainee's medical or psychiatric needs. The result is that citizens die because the threat of personal liability does not function to deter jailers from ignoring suicide threats. The Eleventh Circuit has so far refused to acknowledge that the duty of a jailer to provide for the serious medical needs of a prisoner is "clearly established" sufficiently to find in any liability under 42 U.S.C. § 1983 for any failure to provide necessary medical care.

The Eleventh Circuit's interpretation of the duty of jailers with respect to their obligations to provide for the basic medical and psychological needs of their charges is at direct odds with the simple principal established in *Estelle v. Gamble*, 429 U.S. 97, 97 S.Ct. 285, 50 L.Ed. 2d 251 (1976). Under *Estelle* prison officials who are deliberately indifferent to the medical and psychological needs of an inmate are not entitled to a qualified immunity for their constitutional violation. Under *Estelle*, it is recognized that an inmate must rely on prison authorities to treat his medical needs and if the authorities fail to do so, those needs will not be met. (*Estelle v. Gamble*, 429 U.S. at 103) Deliberate indifference to serious medical needs of prisoners constitutes the unnecessary and wanton infliction of pain. This is true whether the indifference is manifested by prison doctors in their response to the prisoner's needs ***or by prison guards*** in intentionally denying or delaying access to medical treatment or intentionally

interfering with the treatment once prescribed. (*Estelle v. Gamble*, 429 U.S. at 104).

The Eleventh Circuit ignores the reality that the jailer is usually ***the first*** person within the prison system who is presented with serious medical needs, and it is the jailer who initially must respond to such needs. It is the jailer's duty to respond to the serious medical need by calling in trained medical help and to render stop-gap aid until those with more training can give assistance. If the jailer does not respond, there is no one else to do it.

An inmate must rely on prison authorities to treat his medical needs. If the authorities fail to do so, those needs will not be met. *Estelle*, 429 U.S. 97 at 103, 97 S.Ct. at 290. Under the ruling in this case, the Eleventh Circuit has utterly failed to recognize that it usually is the jailer who must first detect a serious medical condition and call the physician. If the jailer ignores the serious medical need and fails to contact a physician or other medically trained professional, the serious medical need cannot be addressed by the physician. The inmate is not in a position to make the call. The physician cannot diagnose if never called.

It should be no less "deliberate indifference" for a jailer to ignore a suicide threat than for a trained medical practitioner to do so. A suicide threat is an obvious statement of need. It is an emergency that cries for a response.

In this case, the Eleventh Circuit says a jailer simply has no duty to respond at all to the medical of psychological needs of an inmate in their care. "***They are not physicians and thus were not responsible for meeting the psychiatric and medical needs of Haney at the time she was in the jail.***" *Haney v. City of Cumming*, 69 F.3d at 1103. (Emphasis Added.) The Eleventh Circuit does not distinguish a suicide threat from any other medical emergency. Simply, there is no duty for a jailer to respond. By holding that jailers have ***no*** duty to meet or respond to serious medical conditions, Eleventh Circuit inmates are stripped of all protection of their serious medical and psychological needs when they are in the presence of jailers.

Under the Eleventh Circuit's ruling in this case, there would be no liability to a jailer who came upon a prisoner lying, screaming, on the floor in a pool of blood, bleeding from a cut and sat by, doing nothing but watching, while the prisoner bled to death. In both cases there is an obvious sign of danger and overwhelming medical need. The bleeding emergency is of equal ***life-threatening*** significance with Ms. Haney's condition, but is of no different ***legal*** significance within the Eleventh Circuit's ruling in this case. Under the Eleventh Circuit's decision in this case, neither jailer has ***any*** obligation to address the prisoner's serious medical needs.

The Eleventh Circuit has slowly narrowed the simple concept of the existence of a "clearly established" duty to the point of absurdity—now only physicians are responsible for the medical care of inmates. The Eleventh Circuit's holding restricts the duty of providing medical care for serious illness to physicians. It holds that only physicians are able to perceive what most ordinary people know instinctively–that suicide threats must be taken seriously, particularly when they are made by persons in stressful, unfamiliar environment or who are chemically intoxicated and impaired.

Governments act through individuals. 42 U.S.C. § 1983 obligates individuals acting for the government not to violate the constitutional rights of those under their dominion. The concept of qualified immunity sets the boundaries of individual conduct. The Eleventh Circuit has twisted the concept of qualified immunity to the breaking point by implicitly requiring that only *physicians* can perceive "serious" medical conditions. The Eleventh Circuit thereby immunizing all others from being liable for failing to respond to even the most emergent needs, even for conditions the ordinary, reasonable person would find quite serious.

The holding in this case is directly in conflict with the principal established in *Estelle v. Gamble*.

The obvious severity of Ms. Haney's condition is established by common sense and by the testimony of

the witnesses. Wayne Lindsey, one of the arresting officers, testified that at the time he delivered Ms. Haney to the County Jail the evening before her death, she was in the need of medical attention. Lindsey told the booking jailer of Haney's need for medical attention. During the night in jail, Ms. Haney's medical condition was so poor that the jailers regularly took her blood pressure. In the morning, Ms. Haney stood on the sink and said that she might as well kill herself. Ms. Haney was intoxicated with some type of drug. Shaun Haney's speech was slurred. She had torn up a mattress, perhaps trying to get materials with which to harm herself. She had been "raising hell" in her cell. Haney had been crying, upset, and sitting in the corner. Her need was so serious that Rusty Griffin sought the assistance of a supervisor. It is clear that Griffin, Matthews, and the County all knew that Shaun Haney was in serious need of medical treatment. It was clear Haney was in serious mental distress, yet, nothing was done to protect her. No physician was called.

It is plainly obvious even to an ordinary person with no medical training that a prisoner who is heavily intoxicated on drugs to the point that the jailers perceive they must keep track of blood pressure, who is found standing on a sink babbling, who has torn up a mattress, who has been "raising Hell", who has been sitting in the corner, crying, and who has threatened suicide, needs medical attention. It is equally obvious that such person is in danger of harming herself and

needs continuous monitoring. Such person should not be transferred to a new jail, put into a cell with a sheet, horizontal bars, and behind a closed door out of sight, and without her new jailers having any information concerning her mental state.

This evidence overwhelmingly establishes that Ms. Haney had a serious need for medical care while incarcerated. Her need was clearly life-threatening and serious enough to bring her within the protection of the Eighth and Fourteenth Amendments. Even the Eleventh Circuit has held medical needs of inmates need not be considered "life threatening" to be considered serious under Estelle. Mandel v. Doe, 888 F.2d 783 (11th Cir. 1989); See also Aldridge v. Montgomery, 753 F.2d 970, 973 (11th Cir. 1985). Under the facts, a jury reasonably could infer Griffin and Matthews each actually observed Shaun Haney's obvious distress, each actually perceived the seriousness of her condition, and each acted with deliberate indifference to her serious medical needs sufficient to hold each liable under 28 U.S.C. §1983.

The district court examined the evidence in the case and found that there were sufficient facts to defeat a summary judgment in favor of Griffin and Matthews. In denying summary judgment to Griffin and Matthews, the district court determined the jury could infer from the existing facts that Griffin and Matthews acted with deliberate indifference to Haney's serious medical and psychological needs. The facts properly defeat the

defendants' Motions for Summary Judgment when a jailer has an obligation reasonably to provide for the serious medical needs of those inmates under his direct responsibility, dominion and control and does nothing.

Matthews and Griffin failed to meet their clear duty to obtain medical attention for Haney. They failed to keep her in a safe place under suicide watch until medical help could arrive. They failed to seek medical assistance.

Matthews used the power the County had given him to act and he acted. His act was to deliberately ignore the obvious danger he had observed. Instead of taking steps to keep Haney safe, Matthews transferred Haney to the City Jail without any accompanying information concerning her condition. As a result, Haney was placed in a jail cell, fully equipped with the instruments of suicide--seclusion, a sheet, and bars. Haney hanged herself and died.

Given the obvious seriousness of Haney's condition, the Eleventh Circuit has decided that no matter how serious an inmate's medical condition may be, and even when there are sufficient facts to establish the fact that the jailers were "deliberately indifferent" to the inmates needs, jailers "are not responsible" to attend to the needs because they are not physicians. By holding that a jailer has no duty, even the consideration of the issue of "deliberate indifference" of a jailer is foreclosed. Since there is no duty, there can be no

"deliberate indifference" to a duty to create breach and liability. All except physicians are immunized.

If any justice remains in our criminal justice system, the Eleventh Circuit's position is simply wrong, unjust, and must be repudiated. It is not part of the evolving standards of decency to enable mentally disturbed prisoners to kill themselves when jailers are aware of an obvious potential suicide risk that no ordinary person could ignore. As Justice Souter stated in *Farmer v. Brennan*, 511 U.S. ___, 114 S.Ct. 1979, 128 L.Ed.2d 811, at 823 (1994), "Having incarcerated 'persons [with] demonstrated proclivit[ies] for antisocial criminal, and often violent conduct, having stripped them of virtually every means of self-protection and foreclosed their access to outside aid, the government and its officials are not free to let the state of nature take its course." (cites within the quotation omitted.) Prisoners should be as entitled to be protected by the Eighth and Fourteenth Amendments from harming themselves when they are mentally ill, as they are entitled to be protected from being harmed by other prisoners, from being subjected to unreasonable environmental risks, and from being exposed to contagious diseases. See, *Helling v. McKinney*, 509 U.S. ____, 125 L.Ed.2d 22, 113 S.Ct. 2475 *(1993). Farmer v. Brennan,* ___ U.S. ____, 114 S.Ct. 1970, 128 L.Ed. 811 (1994).

There is no magic in the formula that places responsibility for prisoner's serious medical and

psychological needs exclusively in the hands of physicians when the need is one easily perceived and commonly understood by normal, ordinary people. There is nothing in any Supreme Court case which removes jailer's from being included within the general understanding of "prison officials" and applying the rationale of *Farmer* and *Helling* to them.

This decision of the Eleventh Circuit that jailers have no duty deprives all inmates within the Circuit of any protection from constitutional torts relating to failure of jail personnel to provide necessary medical care addressed under 42 U.S.C. §1983. The holding in this case is directly in conflict with the principal established in *Estelle, Farmer* and *Helling*. Certiorari should be granted to consider the reversal of this Eleventh Circuit decision and reinstatement of the denial of summary judgment to Griffin and Matthews.

II.

CERTIORARI SHOULD BE GRANTED TO RESOLVE THE CONFLICT AMONG THE FIRST, FIFTH, EIGHTH, AND ELEVENTH CIRCUITS RELATIVE TO THE DUTY OF JAILERS TO PROVIDE FOR THE SERIOUS MEDICAL AND PSYCHOLOGICAL NEEDS OF THE INMATES IN THEIR CUSTODY.

The Eleventh Circuit's holding in this case that jailers have no duty to meet the medical or psychiatric needs of suicidal inmates because they are not physicians is directly in conflict with the duties recognized by the First, Fifth, and Eighth Circuits which all recognize a constitutional duty for jailers to provide for inmate's serious medical needs.

The Eighth's Circuit's position as stated in *Rellergert v. Cape Girardeau County*, 924 F.2d 794 (8th Cir. 1991) holds, at 924 F.2d 797, "While we conclude that the law is clearly established that jailers must take measures to prevent inmate suicides once they know of the suicide risk, we cannot say that the law is established with any clarity as to what those measures must be."

Likewise, the Eleventh's Circuit's holding is in conflict with the First Circuit's case *Consolo v. George*, 58 F.3d 791 (1st Cir. 1995) which holds at 58 F.3d 794-794, "Here the constitutional standard is clear. Since at least 1983 there has been no doubt that a pre-trial detainee is entitled to medical attention for serious medical needs under the due process clause of the Constitution."

In Stokes v. Delcambre, 710 F.2d 1120 (5th Cir.1983), the Fifth Circuit held jailers' indifference to the detainee's injuries was sufficiently egregious to establish their liability for failing to protect the pretrial detainee from violence by other inmates. In Hare v.

City of Corinth, --- F.3d ----, 1996 WL 34766 (5th Cir.(Miss.), Jan 29, 1996) (NO. 93-7192), the Fifth Circuit adopted the "deliberate indifference" standard to apply to the failure of prison officials, including jailers, to provide medical care to pre-trial detainees.

CONCLUSION

Only the Eleventh Circuit holds that jailers have no constitutional responsibility to provide necessary medical care to the inmates under their custody and care. Certiorari should be granted to bring the Eleventh Circuit within the norm of standards of decency of treatment for inmates who are suicidal.

Respectfully submitted,

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APPENDIX A —OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT FILED NOVEMBER 27, 1995.

United States Court of Appeals,

Eleventh Circuit.

No. 93-9183.

Brandon Joshua HANEY, by next friend, Guardian of his Property, Margean Haney; Dana Shaun the Estate of Dana Shaun Haney, by Margean Haney, Administratrix, Plaintiffs-Appellees-Cross-Appellants,

v.

CITY OF CUMMING; and Wayne Lindsey, in his capacity as Chief of Police for the City of Cumming, Defendants-Cross-Appellees,

Cumming Police Department; Sheriff's Department of Forsyth County; Roslyn Haygood; D.O. Dampier; Jeff Lowe, Defendants,

Forsyth County; Wesley Walraven, in his individual capacity and in his capacity as Sheriff of Forsyth County; Russell Matthews; Rusty Griffin, Defendants-Appellants-Cross-Appellees.

Nov. 27, 1995.

Appeals from the United States District Court for the Northern District of Georgia. (No. 1:90-01438-CV-JTC), Jack T. Camp, Judge.

Before KRAVITCH, Circuit Judge, and GODBOLD and MORGAN, Senior Circuit Judges.

MORGAN, Senior Circuit Judge:

The parties before us appeal the district court's ruling on summary judgment in a 42 U.S.C. § 1983 action arising from a prisoner suicide. For the reasons set forth below, we reverse the district court's denial of summary judgment with respect to the qualified immunity claims and dismiss the remaining issues for lack of appellate jurisdiction.

FACTUAL BACKGROUND

On April 20, 1989, police officers for the City of Cumming, Georgia, travelled to the local Days Inn hotel in response to a telephone call from the hotel manager, advising them that a room was being occupied by persons who had failed to pay for it. At the hotel, the police arrested Dana Shaun Haney and Jacqueline Hunt for theft of services. Both women were taken to the city jail where they were booked, during which time Hunt retrieved fifteen Xanax pills from her purse and swallowed them.[1]

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[1]At the time of their arrests, both Haney and Hunt were high on intoxicants. Hunt later admitted that she was not

Later in the afternoon, Police Chief Wayne Lindsey of the city police transferred Haney and Hunt to the Forsyth County jail. While there, Hunt passed out and was taken to a local hospital. The county deputies placed Haney in a detoxification cell.

The next morning, Russell Matthews, Chief Criminal Investigator for the Forsyth County Sheriff's Department, arrived at the county jail to speak with Haney. Matthews was conducting an investigation into local physicians who reportedly have written excessive amounts of prescription drugs and thought Haney might have some useful information. The two spoke for approximately thirty to forty-five minutes, during which time Haney expressed deep concern over Hunt's condition. After making inquiries of the jailers, Matthews informed Haney that Hunt was in intensive care at the hospital and could not receive any visitors.

Upon the conclusion of her interview with Matthews, Haney was returned to the detoxification cell. Shortly thereafter, officer Rusty Griffin, who was on duty at the jail that morning, found Haney standing on the toilet in her cell and noticed that she had torn up her mattress and pillow. When Griffin questioned her about her conduct, Haney replied that she "might as well kill" herself. Griffin then immediately located Matthews and brought him back to the cell to observe Haney, who was

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attempting suicide when she swallowed the Xanax pills. Rather, she was merely trying to keep her "high" going because she knew it would be a long time before she would be able to take any other drugs.

found crying in the corner.[2] After Matthews and Haney spoke for a while, she assured him that she would behave, but told him she wanted to be taken back to the city jail. Matthews and the county deputies made the necessary arrangements, and Haney was transferred to the city jail shortly after noon.[3] Unfortunately, no one from the county informed the officers at the city jail that Haney had mentioned suicide, and Haney was placed in an unsupervised cell. Within an hour, a dispatcher at the city jail found Haney hanging from a horizontal bar in her cell with a sheet around her neck. She was not breathing. Attempts were made to revive her, but they proved unsuccessful. Prior to Haney's death, there had never been a suicide at either the Forsyth County or Cumming city jail.

As a result of the suicide, Margean Haney, as next friend of Haney's minor son, Brandon Joshua Haney, and as administratrix of Haney's estate (collectively hereinafter "Plaintiffs"), brought suit under federal and Georgia law against the City of Cumming, Cumming Police Chief Wayne Lindsey, Forsyth County, Forsyth County Sheriff Wesley Walraven, Inspector Russell Matthews, and Officer Rusty Griffin (collectively hereinafter

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[2]Griffin claims he informed Matthews that Haney had mentioned killing herself, but Matthews denies that anyone ever told him that she was contemplating suicide.

[3]During the transfer from the county jail, Haney appeared to be in good spirits as she was laughing, talking, smoking, and drinking coffee.

"Defendants"). On March 18, 1991, the district court compelled the Plaintiffs to respond to the discovery requests filed by the various Defendants. When the Plaintiffs failed to comply, the district court dismissed their complaint. The district court set aside its dismissal on October 23, 1991, pursuant to FED.R.CIV.P. 60(b), on the Plaintiffs' counsel's testimony that he had failed to inform his clients of the court's discovery order.

After the completion of discovery, the Defendants filed motions for summary judgment. The district court granted summary judgment in favor of the City of Cumming and Chief Lindsey, finding they had no special reason for concern about Haney's condition when she was transferred to the city jail. The district court denied summary judgment on qualified immunity in favor of Matthews and Griffin, finding that Haney's constitutional rights at issue were clear at the time of her incarceration and that genuine factual questions remained regarding the propriety of their conduct. Summary judgment was granted in favor of Forsyth County and Sheriff Walraven after the district court concluded that Griffin's training and the county's inmate transfer policy were not facially unconstitutional. Nevertheless, the district court denied summary judgment for Forsyth County and Walraven as to Matthews' training and discretion. Finally, summary judgment was granted in favor of all the Defendants on the state law claims after the district court found that the Plaintiffs had failed to adequately support such claims.

This appeal and cross appeal stem from the district court's rulings on summary judgment and its decision to reinstate the Plaintiffs' complaint pursuant to FED.R.CIV.P.

60(b). We address the necessary issues in the following discussion.

DISCUSSION

A. Appellate Jurisdiction

At the outset, we must determine our jurisdiction over these appeals since federal courts are courts of limited jurisdiction. *Winfrey v. School Board of Dade County*, 59 F.3d 155, 157 (11th Cir.1995). The primary issue presented to us for consideration is whether the district court erred in denying summary judgment for Matthews and Griffin with respect to their qualified immunity defense. A trial court's denial of qualified immunity at the summary judgment stage is immediately appealable. *Mitchell v. Forsyth*, 472 U.S. 511, 530, 105 S.Ct. 2806, 2817-18, 86 L.Ed.2d 411 (1985); *McCoy v. Webster*, 47 F.3d 404, 406 (11th Cir.1995). Thus, we have jurisdiction over Matthews' and Griffin's appeal, but only insofar as the district court's order turns on purely legal issues. *Johnson v. Jones*, — U.S. —, —, 115 S.Ct. 2151, 2156, 132 L.Ed.2d 238 (1995); *Babb v. Lake City Community College*, 66 F.3d 270 (11th Cir.1995).

Our jurisdiction over the remaining claims presented to us on appeal is a more problematic question.[4]

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[4]The Plaintiffs and the Forsyth County Defendants argue that it is proper for us to exercise appellate jurisdiction over the remaining issues. The City of Cumming Defendants simply state that they do not oppose such jurisdiction. Thus, no party objects to our hearing these matters. Nevertheless, jurisdiction cannot be conferred

This case is one that involves multiple claims and multiple parties, and the district court's order on summary judgment disposed of some but not all of the claims and parties.

> [A]ny order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

FED.R.CIV.P. 54(b); *see generally* 10 CHARLES A. WRIGHT, ARTHUR R. MILLER & MARY KAY KANE, FEDERAL PRACTICE & PROCEDURE §§ 2653-2661 (1983 & Supp.1995). An order that disposes of some but not all claims may be appealable if it is so certified by the district court pursuant to Rule 54(b). Absent such a certification, as is the case here, the district court's ruling is merely interlocutory and not an appealable final decision over which we have jurisdiction. 28 U.S.C. § 1291; *see Mesa v. United States*, 61 F.3d 20 (11th Cir.1995); *Penton v. Pompano Constr. Co.*, 963 F.2d 321 (11th Cir.1992);

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upon us by consent of all parties involved. We must decide the validity of our own authority to consider a matter even in the absence of objection from an interested party.

CHARLES A. WRIGHT, LAW OF FEDERAL COURTS § 102, at 756 (5th ed. 1994).[5]

The Plaintiffs and the Forsyth County Defendants argue that we have the authority to exercise appellate jurisdiction over the remaining claims since they are pendent to the qualified immunity appeal. It is true that in the past we have used our discretion to exercise pendent jurisdiction over additional issues when an appeal appeared before us on the qualified immunity question. *See, e.g., Kelly v. Curtis,* 21 F.3d 1544 (11th Cir.1994). Earlier this year, however, the Supreme Court rejected our practice of exercising such discretionary jurisdiction in *Swint v. Chambers County Commission,* --- U.S. ----, 115 S.Ct. 1203, 131 L.Ed.2d 60 (1995), finding our purported pendent party appellate jurisdiction to be nonexistent under these circumstances.[6] In view of *Swint,* we must

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[5]We note that three exceptions to the final judgment rule exist: (1) the collateral order doctrine, (2) the doctrine of practical finality, and (3) the exception for intermediate resolution of issues fundamental to the merits of the case. *Lockwood v. Snookies, Inc. (In re F.D.R. Hickory House, Inc.),* 60 F.3d 724, 725 (11th Cir.1995). None of these exceptions apply to the issues remaining on this appeal.

[6]In *Swint,* the Supreme Court suggested that appellate review might exist where an otherwise nonappealable question is "inextricably interwoven" with an issue properly before us. *Id.* at ---, 115 S.Ct. at 1212. On the facts of this case, however, we find that no such jurisdiction exists since the issues remaining on appeal are

conclude that our immediate authority to review the district court's denial of Matthews' and Griffin's qualified immunity defense does not include the authority to review at once the questions regarding the denial or granting of summary judgment to the other Defendants.[7] *See, e.g., L.S.T., Inc. v. Crow*, 49 F.3d 679, 683 n. 8 (11th Cir.1995). Thus, the only issue we now consider on appeal pertains to Matthews' and Griffin's qualified immunity.

B. Qualified Immunity

The Plaintiffs' complaint alleges that Matthews' and Griffin's failure to prevent Haney's suicide violated her civil rights as guaranteed by the Eighth and Fourteenth Amendments. Both Matthews and Griffin claimed the protection of qualified immunity, but the district court denied that argument at summary judgment. Since issues of qualified immunity present questions of law, we review the district court's decision *de novo*. *Jordan v. Doe*, 38 F.3d 1559, 1563 (11th Cir.1994).

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not inextricably interwoven with the qualified immunity defense asserted by Matthews and Griffin.

[7]Likewise, we lack appellate jurisdiction to consider now the Defendants' argument that the district court erred by reinstating the Plaintiff's complaint pursuant to FED.R.CIV.P. 60(b). Such an order is interlocutory in nature and unreviewable absent a final judgment.

To prevail in a prisoner suicide case, a plaintiff must prove that a defendant displayed deliberate indifference to a prisoner's mental condition and the likely consequences of that condition. *Tittle v. Jefferson County Commission,* 10 F.3d 1535, 1539-40 (11th Cir.1994) (discussing governmental liability and not individual liability). The deliberate indifference standard is a subjective one, requiring that a defendant know of and disregard an excessive risk to an inmate's health or safety. *Farmer v. Brennan,* — U.S. ---, ---, 114 S.Ct. 1970, 1979, 128 L.Ed.2d 811 (1994); *Hardin v. Hayes,* 52 F.3d 934, 939 (11th Cir.1995). Nevertheless, qualified immunity will shield from civil damages individual government officials who perform discretionary functions "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald,* 457 U.S. 800, 818, 102 S.Ct. 2727, 2738, 73 L.Ed.2d 396 (1982); *see also Belcher v. City of Foley,* 30 F.3d 1390, 1395 (11th Cir.1994); *see generally* Kit Kinports, *Qualified Immunity in Section 1983 Cases: The Unanswered Questions,* 23 GA.L.REV. 597, 600-07 (1989). Should the plaintiff fail to show that the law was clearly established at the time in question, the individual defendant is entitled to qualified immunity. *Belcher,* 30 F.3d at 1400.

In denying Matthews' and Griffin's claim of qualified immunity at summary judgment, the district court relied heavily on our decision in *Waldrop v. Evans,* 871 F.2d 1030 (11th Cir.1989), as evidence that the law in 1989 was established that officers who fail to notify

competent authorities and take appropriate action regarding an inmate's psychological needs can be liable under section 1983. *Waldrop* was an action against doctors at a state correctional facility stemming from a prisoner suicide. Last year in *Belcher*, however, we held that *Waldrop* did not clearly establish officer liability because it pertained only to the issue of physician liability.[8] *Belcher*, 30 F.3d at 1399-1400. Like the case currently before us, *Belcher* involved a suit against police officers in the wake of a prisoner suicide. Specifically, we stated in *Belcher* as follows:

> *Waldrop* could not have clearly established the law governing the conduct of police officers in positions materially similar to Officer Roberson's or any of the other defendant police officers in this case, because *Waldrop* addressed the liability of a physician.... The defendants in this case are not physicians and are not responsible for meeting the medical and psychiatric needs of inmates in a mental health evaluation facility. They are police officers whose primary responsibility is to enforce laws and to arrest persons suspected of violating laws in their community. *Because the circumstances in Waldrop are not materially similar to the circumstances in this case, Waldrop did not clearly establish the law applicable to this case.*

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[8]We note that the district court did not have the benefit of our *Belcher* decision at the time it ruled on the qualified immunity defense.

Id. (emphasis added). We further concluded in *Belcher* that case law other than *Waldrop* failed to establish the law governing the conduct of officers under the circumstances in question. *Id.* at 1401.

Both Matthews and Griffin are in a situation materially similar to the defendants in *Belcher*. They are not physicians and thus were not responsible for meeting the psychiatric and medical needs of Haney at the time she was in the jail. Having found in *Belcher* that case law as of 1991 did not clearly establish constitutional or statutory rights in such a situation, it is clear that there also were no such rights at the time of Haney's 1989 suicide. Contrary to the district court's conclusion, neither *Waldrop* nor other case law clearly establish the law that is applicable to this case. Accordingly, the district court erred when it denied qualified immunity for Matthews and Griffin.

CONCLUSION

For the reasons stated herein, the district court's denial of qualified immunity to Matthews and Griffin is REVERSED. All other issues brought before us are hereby DISMISSED for lack of appellate jurisdiction.

REVERSED in part and DISMISSED in part.

APPENDIX B – JUDGMENT OF THE UNITES STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT FILED NOBEMBER 27, 1995.

United States Court of Appeals

FOR THE ELEVENTH CIRCUIT

No. 93-9183

D.C. Docket No. 1:90-01438-CV

BRANDON JOSHUA HANEY, by next friend, Guardian of his Property, Margean Haney; DANA SHAUN THE ESTATE OF DANA SHAUN HANEY, by Margean Haney, Administratix,

Plaintiffs-Appellees,
Cross-Appellants,

versus

CITY OF CUMMING; WAYNE LINDSEY, in his capacity as Chief of Police for the City of Cumming,

Defendants-
Cross-Appellees,

CUMMING POLICE DEPARTMENT; SHERIFF'S DEPARTMENT OF FORSYTH COUNTY; ROSLYN HAYGOOD; D. O. DAMPIER; JEFF LOWE,

Defendants,

FORSYTH COUNTY; WESLEY WALRAVEN, in his individual capacity and in his capacity as Sheriff of Forsyth County; RUSSELL MATTHEWS; RUSTY GRIFFIN,

Defendants-Appellants, Cross-Appellees.

Appeals from the United States District Court for the Northern District of Georgia

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Before KRAVITCH, Circuit Judge, and

GODBOLD and MORGAN, Senior Circuit Judges.

JUDGMENT

These causes came to be heard on the transcript of the record from the United States District Court for the Northern District of Georgia, and were argued by counsel;

UPON CONSIDERATION WHEREOF, it is now hereby ordered and adjudged by this Court that the judgment of the said District Court in these causes be and the same is hereby REVERSED in part and DISMISSED in part in accordance with the opinion of this Court;

It is further ordered that plaintiffs-appellees pay defendants-appellants the costs on appeal to be taxed by the Clerk of this Court.

Entered: November 27, 1995
For the Court: Miguel J. Cortez, Clerk

By: _____
Deputy Clerk

ISSUED AS MANDATE: 12-28-95

APPENDIX C — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA. FILED AUGUST 23, 1993.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Brandon Joshua Haney, by his next friend and guardian of his property Margean Haney; and the estate of Dana Shawn Haney, by Margean Haney, administratrix,	:	
Plaintiffs,	:	
	:	CIVIL ACTION FILE NO. 1:90-CV-1438-JTC
v.	:	
The City of Cumming; Forsyth County; Wesley Walraven, in his individual capacity and his capacity as Sheriff of Forsyth County; Wayne Lindsey, in his capacity as Chief of Police for the City of Cumming; Russell Matthews; and Rusty Griffin,	:	

:

Defendants. :

ORDER

This order concerns a motion [#67] by Defendants Wayne Lindsey and the City of Cumming ["City"; collectively with Lindsey the "City Defendants"] for summary judgment; a motion [#68] by Defendants Forsyth County, Wesley Walraven, Russell Matthews, and Lewis B. "Rusty" Griffin, Jr. [collectively the "County Defendants"] for summary judgment; a motion [#73] by the City Defendants to strike certain testimony; motions [#s 76 and 77] by the County Defendants to strike testimony; and a motion [#82] by Plaintiffs concerning an alleged conflict of interest affecting the County Defendant's attorneys.

Background

This action arises out of the suicide of Dana Shawn Haney while in custody at the City of Cumming jail. Plaintiffs bring suit under 42 U.S.C. § 1983 alleging that Defendants were deliberately indifferent to Haney's medical needs. Plaintiffs also bring state law claims.

On April 20, 1989, City of Cumming police arrested Haney and a friend of hers, Jacqueline Hunt, after they allegedly failed to pay for a hotel room.

County Stmnt. Undisp. Facts 5[9]. Police noticed that the two women were intoxicated. Id. at 4. The police took them to the City Jail, where Hunt swallowed fifteen Xanax pills. Id. at 7. That afternoon, Defendant Lindsey, Chief of the City of Cumming Police Department, drove the two to the Forsyth County Jail. Id. at 8. He told the jailer that the women needed medical attention. Lindsey Dep. 69.

The jailer admitted Haney and Hunt to the jail, even though written jail procedures apparently prohibited accepting seriously intoxicated inmates. Forsyth County (Henderson) 5/22/92 Dep. Exh. 20. Hunt passed out and fell off a bench, Waters Dep. 12-13, 18-19, so deputies took her to the local hospital. They put Haney in the detoxification cell. County Stmnt. Undisp. Facts 10.

The next morning, April 21, at eight o'clock, Defendant Griffin began his duty shift as jailer. Id. R 14. He found Haney asleep, and the departing jailer told him of Haney's condition. Id. at 14 & 15.

Later that morning, Defendant Matthews visited the jail. Matthews was Chief Criminal Investigator for the Forsyth County Sheriff's Department. Id. at ¶ 16. He asked to speak with Haney. According to Matthews, he wanted to talk to her about an

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[9] The Court cites to Defendants' statements of material facts not in dispute to the extent Plaintiffs do not deny them. See LR 220-5(b)(2), NDGa.

investigation he was conducting involving physicians prescribing excessive amounts of drugs. Id. at ¶ 17; Plaintiff's statement of facts ¶ 33.

Matthews interviewed her for one half to three quarters of an hour. County Stmnt. Undisp. Facts ¶ 18. Haney asked about Hunt's condition. Matthews made inquiries, and told Haney that Hunt was in intensive care and could not receive visitors. Id. at ¶ 19. Haney told Matthews that Hunt was the only one who loved her, and that she and Hunt had been lovers. Id. at ¶ 20.

After the interview, Matthews suggested that Haney call her parents. She then called her aunt, Lisa Addis. County Undisp. Facts ¶ 23. Haney sounded upset, but told her aunt she was OK, Addis recalls. Addis Dep. 27. Haney was then taken back to the detoxification cell.

The evidence conflicts somewhat concerning the timing of events. The parties agree that at some point, Griffin saw Haney standing on the sink or toilet in her cell. County Undisp. Facts ¶ 24. She had torn up the mattress or pillow. Id. When Griffin asked her what she was doing, she claimed she was going to kill herself. Id. at ¶ 25; Griffin Dep. exh. P13 (jail log entry 4/21/89 at 10:30 a.m.). Griffin knew that Hunt and Haney had a very close relationship. See Griffin Dep. 28.

Griffin, who had only four months' experience, called another jailer to observe Haney, and went to find

a supervisor. County Undisp. Facts ¶ 26. Griffin found Matthews, and asked him to speak to Haney in her cell. County Undisp. Facts ¶ 27.

According to Griffin, Griffin specifically told Matthews that Haney had said she was considering suicide. Griffin Dep. 19. Matthews denies either Griffin or Haney told him this. Matthews Dep. 22, 32-33, 38, 48. Griffin states that he described Haney's actions to Matthews before Matthews's interview with Haney. Griffin Dep. 19.

In any event, Matthews went to the detoxification cell and found Haney sitting on the floor in the corner, crying. County Undisp. Fact at ¶ 28. He told her, "I thought you weren't going to come back in here and get all upset until we found out what was going on [with Hunt]." Id. at ¶ 28. Haney asked if she could borrow $1.50 for cigarettes. Matthews said he would give her the money if she would behave and not get upset. Id. at ¶ 29. Haney told Matthews she would behave, but asked to go back to the City jail. Id. at ¶ 30.

Matthews left, called the City dispatcher to ask if there was room at the City jail, and learned that there was. Id. at ¶ 31. He arranged to transport Haney, even though Forsyth County's written jail policies prohibited transferring mentally ill prisoners. Matthews also asked that he be given information about Hunt's condition as soon as any was available. Id. at ¶ 32.

Matthews returned to Haney's cell with the cigarettes. He told her he would give them to her if she would "promise and shake [his] hand that [she] won't do anything funny now, and to cause them no problems." Haney responded OK and shook hands. Id. at ¶ 33. Matthews promised to tell her when he learned more about Hunt. Id. Matthews later testified that he thought based on speaking to Haney and his law enforcement experience that Haney would be fine and was not suicidal. Id. ¶¶ 51-52 and Plaintiffs' response. Had he thought Haney would hurt herself, he would have taken her to a mental health office for evaluation, as he had done with others before. County Undisp. Facts ¶ 53; Matthews Aff. ¶ 5.

Matthews told Griffin that Haney "would be OK now", and told Griffin to let him know if Griffin learned more about Hunt. Id. at ¶ 34. A jail log entry at 11:00 stated that Haney "appears 10-4". Matthews then went to lunch. Id. Griffin thought nothing further about Haney's statement, and did not notice anything unusual about her later. Id. at ¶ 35.

At approximately 12:10 p.m., a Forsyth deputy drove Haney back to the City of Cumming jail. When Haney arrived, she was laughing and smiling, smoking cigarettes and drinking coffee. Id. at ¶¶ 36-37. Jailers noticed nothing unusual about her. Id. at ¶ 40. Nobody told City of Cumming police anything about Haney's suicide threat. City Undisp. Facts ¶¶ 4-6, 12.

The City had a policy of putting prisoners considered suicide risks in cell number 2, and leaving a door open so that the dispatcher could see the prisoner. Lindsey Aff. ¶ 6. City dispatchers put Haney in cell number 2, but did not leave the door open. Thus, the dispatcher could not see her. See City Exh. C (chart of jail).

At 1 p.m., the City dispatcher found Haney hanging with a sheet wrapped around her neck. City Undisp. Facts ¶ 10.

Before Haney's suicide, there had never been a suicide at either the Forsyth County Jail or the City of Cumming Jail. County Undisp. Facts ¶ 47; City Undisp. Facts ¶ 9. There is no evidence in the record concerning prior suicide attempts.

The summary judgment standard

Rule 56(c), Fed. R. Civ. P., defines the standard for summary judgment: Courts should grant summary judgment when "there is no genuine issue as to any material fact . . . and the moving party is entitled to judgment as a matter of law." The general rule of summary judgment in the Eleventh Circuit states that the moving party must show the court that no genuine issue of material fact should be decided at trial. Clark v. Coats & Clark, Inc., 929 F.2d 604 (11th Cir. 1991). "[U]nless the movant for summary judgment meets its burden under Rule 56, the obligation of the opposing party does not arise even if no opposing evidentiary

material is presented by the party opposing the motion." Id.

While all evidence and factual inferences are to be viewed in a light most favorable to the nonmoving party, Rollins v. TechSouth, Inc., 833 F.2d 1525, 1529 (11th Cir. 1987); Everett v. Napper, 833 F.2d 1507, 1510 (11th Cir. 1987), "the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." Anderson v. Liberty Lobby, 477 U.S. 242, 248 (1986). An issue is not genuine if it is unsupported by evidence, or if it is created by evidence that is "merely colorable" or is "not significantly probative." Id. at 250. Similarly, a fact is not material unless it is identified by the controlling substantive law as an essential element of the nonmoving party's case. Id. at 248.

Where neither party can prove either the affirmative or the negative of an essential element of a claim, the movant meets its burden on summary judgment by showing that the opposing party will not be able to meet its burden of proof at trial. Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). In Celotex, the Supreme Court interpreted Rule 56(c) to require the moving party to demonstrate that the nonmoving party lacks evidence to support an essential element of its claim. Thus, the movant's burden is "discharged by showing -- that is, pointing out to the district court --

that there is an absence of evidence to support the nonmoving party's case."

In either situation, only when the movant meets this burden, does the burden shift to the opposing party, who must then present evidence to establish the existence of a material issue of fact. Id. The nonmoving party must go beyond the pleadings and submit evidence in the form of affidavits, depositions, admissions and the like, to demonstrate that a genuine issue of material fact does exist. Id.

Discussion

I. The Section 1983 Claim

Plaintiffs allege that Defendants' failure to prevent Haney's suicide violated her civil rights guaranteed by the Eighth and Fourteenth Amendments.

A. The standard in "deliberate indifference" cases

To prevail under section 1983 for a constitutional violation of substantive due process, a plaintiff must prove defendants were "deliberately indifferent" to the prisoner's taking of her own life. Popham v. City of Talladega, 908 F.2d 1561, 1563 (11th Cir. 1990) (per curiam); Edwards v. Gilbert, 867 F.2d 1271, 1275 (11th Cir. 1989). This standard applies both to prisoners and pretrial detainees. Popham, 908 F.2d at 1563. It requires the court to consider the knowledge the allegedly indifferent

officials had or should have had about the inmate's suicidal tendencies. Id. at 1564.

One can only characterize an official's behavior as deliberately indifferent if he ignored a strong likelihood of suicide, not a mere possibility. Id. at 1563. Failure to notify competent officials of an inmate's dangerous psychiatric state can constitute deliberate indifference. Waldrop v. Evans, 871 F.2d 1030, 1036 (11th Cir. 1989) (citations omitted).

The doctrine of respondeat superior does not apply in section 1983 actions. Vineyard v. County of Murray, 990 F.2d 1207, 1211 (11th Cir. 1993) (citing Monell v. Department of Social Servs., 436 U.S. 658, 691, 98 S. Ct. 2018, 2036 (1978)). However, a municipality is liable for a deprivation of civil rights if the municipality has an official policy or customary practice of deliberate indifference to an inmate's needs, and this policy was the "moving force of the constitutional violation". Id.

A jury may infer that an unconstitutional policy existed based even on a single decision taken by "the highest officials responsible for setting policy" in the relevant area. City of St. Louis v. Praprotnik, 485 U.S. 112, 123, 108 S. Ct. 915, 924 (1988) (plurality opinion) (citations omitted). Inadequate policies of training, discipline and supervision can trigger liability. Again, though, this is true only where the municipality's failure to train, discipline or supervise evidences a "deliberate

indifference" to the rights of its inhabitants. Vineyard, 990 F.2d at 1212 (citation omitted).

Similarly, a municipal official with final policy-making authority who sets an unconstitutional policy may be liable for it. Whether an official has final policy-making authority is a question of state law for the court to decide, not the jury. Owens v. Fulton County, 877 F.2d 947, 950 (11th Cir. 1989). Even if no policy is at issue, a jail supervisor may be liable for his subordinates' acts if (1) the supervisor showed deliberate indifference to the inmate's mental health needs by failing adequately to train and supervise subordinates, (2) a reasonable person in the supervisor's position would know that this failure constituted deliberate indifference, and (3) the supervisor's conduct caused the constitutional infringement by the subordinate. Greason v. Kemp, 891 F.2d 829, 836-37 (11th Cir. 1990).

The individual Defendants here have claimed to have qualified immunity from suit. Such immunity will protect an official from suit if "a reasonable officer could have believed his actions to be lawful, in light of clearly established law and the information the officer possessed." Edwards, 867 F.2d at 1273 (citations and internal elisions, brackets, and italics omitted). Once an official establishes that he acted within the scope of his official discretion, the burden shifts to the plaintiff to establish that the official's actions violated clearly established constitutional law. Courson v. McMillan, 939 F.2d 1479, 1488-89 (11th Cir. 1991). The plaintiff

need not point to cases that resolved the precise factual issues in his or her case. Rather, the plaintiff need only show that case law sufficiently established the "countours" of his or her constitutional rights so that the unlawfulness of the defendant's conduct would have been apparent. Nicholson v. Georgia Dept. of Human Resources, 918 F.2d 145, 147 (11th Cir. 1990).

Subjective good faith does not create qualified immunity. Instead, the test is objective. See Nicholson, 918 F.2d at 147; Waldrop, 871 F.2d at 1036.

B. Testimony of Dr. Davis

Defendants have asked the Court to strike the testimony of Plaintiff's expert medical witness, Dave McAlister Davis. Davis has testified that Defendants' actions and practices violated established medical standards.

In a case such as this, a medical expert can certainly testify that the medical or psychiatric treatment jailers provided a prisoner was grossly inadequate by medical standards. If it were adequate, there would be no cause of action. A medical expert can also testify to any mental illness that the prisoner may have suffered, how this illness would have manifested itself to an observer, and the proper procedures for treating it. He may testify that jailers' training was inadequate, and discuss the advantages of having properly trained jailers.

However, in a case involving deliberate indifference, the official's knowledge is a controlling consideration. If the defendant official is a medical doctor, a physician's testimony is highly relevant to establishing what the defendant probably knew or should have known. However, a doctor's opinion about what a reasonable jailer likely knew or should have known based on the jailer's training and experience has no special weight. Cf. Howell v. Evans, 922 F.2d 712, 720 (11th Cir.) (even after testimony care was inadequate, "it remains for a court or jury to determine if the care amounts to deliberate indifference"), vacated after settlement, 931 F.2d 711 (1991).

A motion to strike under Federal Rule of Civil Procedure 12(f) properly applies only to material in a pleading. The Court therefore **DENIES** Plaintiffs' motions to strike. However, the Court will only consider the evidence in question to the extent it would be admissible at trial. This applies to the autopsy report as well.

C. The City Defendants

Plaintiffs charge the City of Cumming and Chief Lindsey of deliberate indifference to the risk Haney would commit suicide. Among other things, Plaintiffs claim that City of Cumming police violated Haney's civil rights by keeping her in a cell with horizontal bars, and by failing to ask Forsyth County officials about her condition before accepting custody of her.

Federal courts rarely or never find official liability for failure to prevent suicide absent an earlier threat or attempt at suicide. See Popham, 908 F.2d at 1564; Edwards, 867 F.2d at 1275; see also Hardin v. Hayes, 957 F.2d 845, 849-51 (11th Cir. 1992) (Alabama police chiefs and sheriff entitled to defense of qualified immunity where they had no personal knowledge of suicide threats). But cf. Tittle v. Jefferson County, 966 F.2d 606, 612 (11th Cir. 1992) (liability may exist for equipping cell with strong sheet and horizontal bar after seven attempted suicides by hanging), vacated for reh'g en banc, 986 F.2d 1384 (11th Cir. 1993). Plaintiffs here do not argue that City of Cumming officials had actual notice of Haney's suicide threat, or that the City had a history of suicide attempts.

Possibly City officials should have asked for more information. Nonetheless, there was no indication that City officials had any special reason to do this in Haney's case. Nor had any inmate committed suicide before. Given that Forsyth County had a policy of not transferring mentally ill inmates and the absence of any history of suicides, it was not a foregone conclusion that a failure to inquire about transferees' status constituted deliberate indifference. For these reasons, the Court **GRANTS** the City Defendants' motion for summary judgment.

D. Matthews

Matthews decided after a brief conversation with Haney that she posed no risk of suicide. Looking at the evidence in the light most favorable to Plaintiff, Matthews knew that Haney had threatened suicide, but Matthews never asked her about this specifically. Soon after the conversation he ordered her transferred to the City without telling City police about her suicide threat. Soon after that she killed herself. Plaintiffs allege that these facts establish that Matthews acted with deliberate indifference to Haney's need for psychiatric treatment.

In response, Matthews has invoked his defense of qualified immunity. Plaintiffs do not dispute that he acted within the scope of his official discretion when he decided to transfer Haney and not to seek expert psychiatric help. Thus, Plaintiffs must show that Matthews's actions violated law that was clearly established as of April 21, 1989.

The case that sheds the most light on the state of the relevant law on April 21, 1989, is Waldrop v. Evans, 871 F.2d at 1036, decided only one week later. In Waldrop, a prisoner with known mental problems slashed his own forearm. A doctor Smith sutured the wound on November 1, 1984, but concluded that the inmate, Waldrop, acted only to attract attention. Dr. Smith therefore did not notify a psychiatrist or take any other steps to treat the inmate's mental condition. 871 F.2d at 1036. The inmate subsequently caused himself serious injury.

> Held the Eleventh Circuit,
>
> The law was clear in 1984 that prison officials have an obligation to take action or to inform competent authorities once the officials have knowledge of a prisoner's need for medical or psychiatric care. See, e.g., [Estelle v. Gamble, 429 U.S. 97, 104-05, 97 S. Ct. 285, 291 (1976)]. Courts have held that failure to notify competent officials of an inmate's dangerous psychiatric state can constitute deliberate indifference. See, e.g., Colburn v. Upper Darby Township, 838 F.2d 663, 667-68 (3d Cir. 1988); Partridge v. Two Unknown Police Officers of Houston, 791 F.2d 1182, 1186-87 (5th Cir. 1986).

871 F.2d at 1036. The court affirmed denial of Smith's summary judgment motion and rejected Smith's qualified immunity defense. Id.[10]

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[10] The Waldrop court's citation to Colburn and Partridge is a bit puzzling, because both were decided after Waldrop injured himself. Still, both were decided before the incident in question here. The Eleventh Circuit has not exactly delineated when federal appeals court decisions from other circuits can make law "clearly established" in this circuit for qualified immunity purposes. Cf. Fortner v. Thomas, 983 F.2d 1024, 1028 (11th Cir. 1993) (existence of cases in this circuit or Supreme Court is "particularly important"); Muhammad v. Wainright, 839 F.2d 1422, 1424-25 &

If a prison official who failed to respond to suicidal acts in 1984 had no qualified immunity defense, it follows a fortiori that jailers who failed to respond to such acts in 1989 also lacked immunity. Thus, if this case is like Waldrop, the Court must deny Matthews's qualified immunity request.

There could be two differences between Matthews's actions here and Dr. Smith's in Waldrop.

First, Matthews may not have "had knowledge" of the inmate's need for psychiatric care in the same way Dr. Smith did. The law does not hold a police officer to the same standard as a physician. However, a fact finder could reasonably conclude that a reasonable police officer, on being told of Haney's behavior, would have known she posed a substantial risk of suicide. Matthews's testimony that he was subjectively unaware of this is not relevant to the objective qualified immunity standard. See Nicholson, 918 F.2d at 147; Waldrop, 871 F.2d at 1036.

Second, Matthews did act, in a sense. He gave Haney cigarettes and talked with her. But these actions may have been essentially diagnostic. Dr. Smith also diagnosed the inmate's condition and concluded he did not need to contact a psychiatrist. Here, Matthews

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N.7 (11th Cir. 1987) (district court case from outside this circuit is not enough). But Waldrop indicates that in this case, Colburn and Partridge together with Estelle suffice.

concluded that he did not even need to mention the issue to City jailers so they could take simple and routine precautions. Thus, Matthews's actions here may not have been sufficient to invoke qualified immunity.

Waldrop obviously does not directly control this case, because the Eleventh Circuit decided it after Haney's death. However, the same reasons that led the Waldrop court to deny summary judgment on the basis of qualified immunity require this Court to do the same here.

E. Griffin

Upon observing Haney's suicidal behavior, Griffin posted an officer to observe her and to ensure she did not harm herself, and reported the matter to a superior, Matthews. Matthews took action and assured Griffin that Haney would be "OK".

If Griffin did mention Haney's suicide threat, there would be no basis for finding him deliberately indifferent to Haney's needs. But a jury could conclude that a reasonable jailer in his position would have known he should mention suicide, not just disruptive activity. Thus, if the evidence shows that Griffin reacted only to Haney's destructiveness, not to her suicide threat, then Griffin could be liable.

F. Forsyth County and Sheriff Walraven

There is no evidence that Walraven personally participated in or knew of any of the actions surrounding Haney's detention and suicide. Rather, Plaintiffs suggest that he and the County are liable for establishing improper policies, and providing inadequate training and supervision. Specifically, Plaintiff charges that Forsyth County (1) inadequately trained its law enforcement officers in detecting suicidal inmates and lacked a policy for screening inmates to determine which ones were suicidal, (2) had no policy for communicating important medical information to other jails if Forsyth County inmates were transferred, and (3) had a policy of delegating to Matthews uncontrolled discretion in making decisions concerning inmates.

1. Training and suicide prevention

Griffin had received some training from one Wanda Tullis. Plaintiffs, however, contend that this training was so inadequate as to amount to conscious indifference. Plaintiffs also argue that Matthews was essentially untrained.

a. Griffin

Forsyth County did have a policy and procedures manual that dealt with the issue of inmate suicides. The County derived this policy from a Georgia Department of Community Affairs model jail policy. Hanson Dep. 10 and exhs. 20-21. The policy describes various procedures for detecting and treating suicidal behavior.

The woman who trained Griffin, Wanda Tullis, instructed him to read this policy. Tullis Dep. 45, 49, 51-52. Plaintiffs have not provided sufficient evidence to allow a reasonable inference that Tullis knew that Griffin would not read the policy.

Whatever one might say about the merits of this policy as a medical matter, it is not facially unconstitutional. Cf. Schmelz v. Monroe County, 954 F.2d 1540 (11th Cir. 1992) (per curiam) (unwritten policy dealing with jail suicides adequate). Ordering jailers to read it and ask questions about it shows at least some concern about the issue of jail suicide.

b. Matthews

Plaintiffs provide evidence that Matthews received no training from Forsyth County on how to deal with jail suicide. Defendants respond by noting that Plaintiffs did not ask Matthews what training he received from other agencies. Defendants, however, do not say what this training was. Defendants have not carried their summary judgment burden of establishing that no material issues of fact remains for determination at trial. Walraven and the County therefore may be liable for inadequately training and supervising Matthews.

2. Inmate transfers

It is true that the County had no policy for transferring an inmate's medical information along with

her. However, Defendants point out that the County also had a policy of not transferring prisoners in need of psychiatric treatment or significant observation to the City of Cumming Jail. County Undisp. Facts ¶ 57. As Plaintiffs admit, had Matthews, Griffin or the other jailers identified Haney as a suicide risk and followed this policy, Haney would probably not have died. This policy by itself therefore did not cause constitutional violation and thus cannot create liability.

3. Matthews's discretion

Plaintiffs contend that Sheriff Walraven and Forsyth County had a policy of granting Matthews unbounded discretion to make decisions about the medical needs and transfers of prisoners. Plaintiffs contend that the County and the Sheriff are liable for this policy.

As noted above, if a municipal policy manifest deliberate indifference to the rights of a municipality's residents, both the municipality and the municipal officers who set the policy may be liable for it. Vineyard, 990 F.2d at 1212. In Praprotnik, the Court addressed the question of when a decision on a single occasion may suffice to establish an unconstitutional municipal policy. 485 U.S. at 123, 108 S. Ct. at 924 (plurality opinion of Rehnquist, C.J., and O'Connor, White, and Scalia, JJ.).

The plurality found that a municipality may be liable for the decisions of an official with top-level

policy-making authority in a specific area of business. An official may have such authority directly by virtue of state or local law, or through delegation. 485 U.S. at 124-25, 108 S. Ct. at 924-25. However, the only authority that counts is the authority to make final policy. "When an official's discretionary decisions are constrained by policies not of that official's making, those policies, rather than the subordinate's departure from them, are the act of the municipality." 485 U.S. at 127, 108 S. Ct. at 926.

Here, Defendants admit that Walraven had final authority to set jail policy. County Br. Sup. Sum. J. 31. This raises two issues. First, could Walraven and/or the County be liable for any policy that Walraven made himself? Second, could the County be liable for any policy that Matthews made pursuant to delegated authority?

a. Walraven's policies

Walraven created a set of written rules governing jail policy. As discussed above, these policies may have been medically inadequate, but they met minimum constitutional standards. Thus, the County cannot be liable for them.

Plaintiffs argue that Walraven incorporated an important exception into these policies: none of them applied to Matthews. Plaintiffs base this contention on Henderson's testimony that none of the written jail policies applied to Matthews, because he was not in the

jail division. Henderson Dep. of 5/22/92 40-41. In addition, Matthews testified, "I've made decisions on a lot of things in the Sheriff's Department, not just necessarily because I would be the supervisor over that division. . . . We [investigators] can come over to the jail and take people out of the jail [for investigations]."

Together, this evidence could support an inference that Sheriff Walraven had an informal policy of allowing Matthews to make decisions about transferring inmates from the jail and screening them for suicidal tendencies. In other words, Walraven may have let Matthews make his own policies, unfettered by any constraints.

This is delegation of authority. Whether such delegation in itself amounts to deliberate indifference depends on whether it was reasonable to delegate such responsibility to Matthews. This in turn depends on whether Matthews's training and background were obviously insufficient to allow him to handle the task. As discussed above, this is a material issue of fact that remains to be resolved at trial. Therefore, Walraven would be liable if Plaintiffs can show that it was clearly unreasonable for him to delegate such authority to Matthews, and if this delegation caused Plaintiffs' injuries.

b. Matthews's policies

If Walraven delegated final policymaking authority to Matthews to supervise jail personnel or jail

activity, then the County would be liable for any policies Matthews set. The test under Praprotnik of whether Matthews received final policymaking authority is whether he was constrained by Walraven's policies.

As discussed above, there is evidence that no jail division policies applied to Matthews. Defendants argue that general Sheriff's Department and criminal investigation division policies did constrain still constrain him. See Henderson Dep. 41, Matthews Aff. ¶ 5. However, Defendants do not produce any evidence of any such policies that in fact limited Matthews's discretion to transfer inmates. Defendants know their own rules better than Plaintiffs do. The burden of pointing to any policies that negate Plaintiffs' claim lies on Defendants for summary judgment purposes. See Clark, 929 F.2d at 607.[11]

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[11] Celotex of course suggests that where there is a lack of evidence on a critical element of a party's case, the party bearing the burden of proof on that element ordinarily loses on summary judgment. However, Clark stands for the proposition that under certain circumstances, a non-moving party that has the burden of proof may survive summary judgment even if that party provides no evidence on a certain point. The Court believes the instant case involves one of those circumstances. If the moving party fails to produce evidence peculiarly in its control, its failure to do so

Thus, Plaintiffs may be able to establish at trial that Matthews had final policy-making authority. If Plaintiffs can prove their allegations, Matthews's policy could have manifested deliberate indifference to Haney's possible suicide. He decided that he could appropriately transfer an inmate who had threatened suicide, without notifying the receiving jail of any possible danger, as long as he subjectively believed based on a brief conversation there was no risk of suicide. Such a transfer may have violated Walraven's general policy, but accorded with Matthews's policy.

The County therefore may remain liable for Matthews's actions.

II. Plaintiffs' state law claims

Defendants raise a number of defenses to Plaintiffs' state law claims. Plaintiffs barely contest them. As Plaintiffs' response to Defendants' motion on these issues is inadequate, the Court **GRANTS** the County Defendants' summary judgment motion as to the state law claims.

III. The conflict of interest

Plaintiffs have asked the Court to declare that the same attorneys cannot represent all the defendants, because the interests of the defendants may conflict. In particular, Griffin would not be liable if he told

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may allow an inference that the evidence is harmful to it.

Matthews of Haney's suicide threat. Matthews, Walraven, and Forsyth County would be insulated from liability if Griffin did not reveal this.

For now, the Court **DENIES** Plaintiffs' motion. Defendants have not fully responded to it, and this order may change their position. Plaintiffs may renew their motion after entry of this order. If they do, they shall support the motion with authority that such a motion is proper.

Conclusion

The Court **GRANTS** the City's motion [#66] for summary judgment. The Court **GRANTS** in part and **DENIES** in part the County Defendants' motion [#67]. The Court **DENIES** the motions to strike [#s 73, 76, and 77] and Plaintiffs' motion [#82] to resolve a conflict of interest.

SO ORDERED, this 20th day of August, 1993.

JACK T. CAMP

UNITED STATES DISTRICT JUDGE

(2)

Supreme Court, U.S.
FILED
APR 18 1996
CLERK

No. 95-1527

In The

Supreme Court of the United States

October Term, 1995

BRANDON JOSHUA HANEY, by next friend, Guardian of his Property, Margean Haney; and THE ESTATE OF DANA SHAUN HANEY, by Margean Haney, Administratrix,

Petitioners,

vs.

CITY OF CUMMING; WAYNE LINDSEY, in his capacity as Chief of Police for the City of Cumming; FORSYTH COUNTY; WESLEY WALRAVEN, in his individual capacity and his capacity as Sherif of Forsyth County; RUSSELL MATTHEWS; and RUSTY GRIFFIN,

Respondents.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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2299

QUESTION PRESENTED

Whether the Eleventh Circuit correctly ruled that, on April 21, 1989, the law was not clearly established that officers who fail to notify competent authorities and take appropriate action regarding an inmate's psychiatric needs violate the Eighth and Fourteenth Amendment rights of the inmate, thereby entitling respondents to qualified immunity.

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OPINIONS AND JUDGMENT BELOW

Within the Appendix to the petition for writ of certiorari Petitioners have provided the order of the Honorable Jack T. Camp, Judge, United States District Court for the Northern District of Georgia, entered on August 24, 1993. Petitioners also include in their Appendix the November 27, 1995 decision of the United States Court of Appeals for the Eleventh Circuit [hereinafter referred to as the "Eleventh Circuit"] in *Haney v. City of Cumming, et al.*, No. 93-9183, 69 F.3d 1098 (11th Cir. 1995)[1], and the Eleventh Circuit's judgment entered November 27, 1995.

STATEMENT OF JURISDICTION

Respondents agree with petitioners' Statement of Jurisdiction.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Respondents agree that this action was brought pursuant to 42 U.S.C. § 1983 for alleged violations of rights secured by the Eighth and Fourteenth Amendments to the Constitution of the United States.

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[1] This decision, set forth at Appendix A to the petition for writ of certiorari, is incorrectly shown as having been issued by the Sixth, rather than by the Eleventh, Circuit. Nevertheless, Appendix A is the Eleventh Circuit's decision in this case.

STATEMENT OF THE CASE

This action stems from the suicide death of Dana Shaun Haney (hereinafter referred to as "Haney") on April 21, 1989. Petitioner Brandon Joshua Haney is the minor child of Haney and is prosecuting this action by his great-grandmother and guardian, Margean Haney. Margean Haney also is named as a petitioner in her capacity as administratrix of Haney's estate.

On July 3, 1990, petitioners filed this suit alleging civil rights violations pursuant to 42 U.S.C. § 1983, the Eighth Amendment and the Fourteenth Amendment. R1-1-1. Among other things, petitioners contended that respondents Russell Matthews and Rusty Griffin were deliberately indifferent to Haney's serious need for psychiatric care. R1-1-18.

Respondents herein filed their motion for summary judgment on October 8, 1992. R2-68-1. By order entered August 24, 1993, the district court granted in part and denied in part respondents' motion. Of significance to this Court is the district court's denial of summary judgment to respondents Griffin and Matthews on the basis of qualified immunity. R3-89-13-16.

Respondents filed their notice of appeal with the district court on September 23, 1993. R3-90-1. Petitioners filed their Notice of Cross-Appeal on October 6, 1993. R3-91-1. The Eleventh Circuit addressed only the district court's qualified immunity ruling and reversed the district court's denial of summary judgment on that basis. *Haney v. City of Cumming, et al.*, No. 93-9183, 69 F.3d 1098, 1102-03 (11th Cir. 1995).

The pertinent facts are as follows: On the afternoon of April 20, 1989, Haney and Jacqueline Hunt ("Hunt") were arrested by city of Cumming, Georgia police officers for theft of services. Exhibit Folder-Deposition of Roslyn Haygood, pp. 14-15, hereinafter "Haygood deposition;" Deposition of Ralph Buck Jones, pp. 24-25, hereinafter "Jones deposition;" Deposition of Aubrey Wayne Lindsey, pp. 6-7, hereinafter "Lindsey deposition." The two women were observed to be under the influence of some intoxicant based upon their slurred speech and unsteady gait. Exhibit Folder-Lindsey deposition at pp. 8-9, 18. Hunt and Haney were handcuffed, placed in a patrol car and taken to the city of Cumming jail, where they were booked. Exhibit Folder-Lindsey deposition, p. 7; Jones deposition, pp. 31-32.

After arriving at the jail, Hunt asked if she could have a cigarette. Exhibit Folder-Deposition of Jacqueline Anita Hunt, part 1, pp. 105-107, hereinafter "Hunt deposition-part 1." When she was told she could, Hunt reached in her purse, but instead swallowed approximately fifteen (15) Xanax pills "just to pass the time." *Id.* This was not a suicide attempt by Hunt, but merely intended to keep her high going because she knew it would be a long time before she could take any other drugs. *Id.*

Late that afternoon, Haney and Hunt were transported to the Forsyth County jail ("the Jail"). Exhibit Folder-Lindsey deposition, p. 13. Shortly after arriving there, Hunt was taken to the local hospital, and Haney was placed in the detoxification cell. Exhibit Folder-Deposition of Jimmy Lamar Waters, pp. 12-13, 18-19,

hereinafter "Waters deposition." Throughout the afternoon and evening, jailers Jimmy Waters ("Waters") and Jeff Lyles checked on Haney every fifteen to twenty (15-20) minutes. Exhibit Folder-Waters deposition, pp. 19, 21-22. She was responsive to them, although she did appear to be intoxicated, *i.e.*, her speech was slurred and she was unsteady on her feet. *Id.*

Wanda Tullis ("Tullis") came on duty at midnight and was briefed in general terms by Waters as to what had transpired during his shift and particularly as to Haney. Exhibit Folder-Deposition of Wanda Dale Tullis, p. 33, hereinafter "Tullis deposition;" Waters deposition, pp. 23-24. Tullis checked on Haney periodically throughout the night and found her asleep on each visit except for one. Exhibit Folder-Tullis deposition, pp. 58-60. At approximately 3:00 a.m., Haney asked Tullis if she could be taken to the hospital to see her friend, Hunt. *Id.* Tullis advised Haney that the hospital would not allow visitors at that hour of the morning and that she (Tullis) would ask the Jail Administrator the next morning whether Haney would be permitted to visit Hunt. *Id.*

Respondent Rusty Griffin ("Griffin") came on duty in the jail at eight o'clock on the morning of April 21, 1989 and was briefed by Tullis. Exhibit Folder-Deposition of Lewis B. Griffin, Jr., pp. 10-11, hereinafter "Griffin deposition." Haney was asleep when Griffin first saw her. *Id.* at p. 11. Keith Dampier came on duty at about 11:00 a.m., and Griffin told him to keep an eye on Haney because she was still considered intoxicated. Exhibit Folder-Deposition of D. O. Dampier, p. 18, hereinafter "Dampier deposition." When Dampier checked Haney's cell, he found her sitting quietly. *Id.* at p. 19. During some of Dampier's

other visits to Haney's cell, he and Haney discussed Hunt, how she (Hunt) was doing, and whether Haney could visit her. *Id.*

During the latter portion of the morning, Respondent Russell Matthews ("Matthews"), the Chief Criminal Investigator for the Forsyth County Sheriff's Department, visited the jail and was told that Haney was in the detoxification cell. Exhibit Folder-Deposition of Russell Matthews, pp. 11, 23, hereinafter "Matthews deposition." Matthews asked to speak with her, because he was conducting an investigation into local physicians who reportedly had written an excessive amount of prescription drugs and thought Haney might have some useful information. *Id.* at p. 11.

Matthews met with Haney in the conference room at the Sheriff's Department for approximately 30 to 45 minutes. Exhibit Folder-Matthews deposition, pp. 17-18. When Haney first came into the room, she told Matthews she wanted to know how Hunt was doing. *Id.* at pp. 12-14. Matthews did not know anything about Hunt, but offered to find out. *Id.* After checking with one of the jailers, Matthews told Haney that Hunt was in intensive care and could not have visitors. *Id.* Haney told Matthews that Hunt was the only one who loved her, that they loved one another, and that they had been lovers. Exhibit Folder-Matthews deposition, p. 14. Haney and Matthews then discussed the physicians from whom she had obtained prescription drugs. *Id.* at pp. 13-14. During the course of the interview, Haney smoked cigarettes and drank most of a pot of coffee. *Id.*

Matthews then asked Haney whether she had notified her parents that she was in jail; she said she had not. Exhibit Folder-Matthews deposition, pp. 14-15. He advised her to give them a call, and he took her back to where the telephone was located. *Id.* Haney then called her aunt, Lisa Addis, and told her she was in trouble again and that she was in jail. Exhibit Folder-Deposition of Lisa Jeannine Addis, pp. 25, 27-28, hereinafter "Addis deposition." Haney asked Addis to let everyone know where she was and that she was okay. *Id.* Addis noted that Haney's speech was slow and somewhat slurred, but other than that, she perceived nothing out of the ordinary. *Id.*

After the telephone call to her aunt, Haney was taken back to the detoxification cell. Exhibit Folder-Griffin deposition, p. 13. Sometime later, Rusty Griffin saw Haney standing on the sink or commode in her cell. *Id.* Griffin also noted at that time that Haney had torn up the mattress and/or the pillow in her cell. *Id.* Griffin then unlocked the door to talk to Haney. Exhibit Folder-Griffin deposition, Exhibit P-15, p. 2. When Griffin asked Haney what she was doing, Haney responded, "I might as well kill myself," or words to that effect. Exhibit Folder-Griffin deposition, p. 15. At the same time, however, Haney did not have anything around her neck.

Griffin removed the items in Haney's cell to prevent further destruction of property and called Keith Dampier to the cell to observe Haney. Exhibit Folder-Griffin deposition, pp. 17, 36. He then locked the door to the cell and went to look for a more senior officer. *Id.* at p. 17. The first such officer he encountered was Matthews. Because of Matthews' experience and position in the Sheriff's

Department and because of the rapport Matthews earlier had established with Haney, Griffin asked Matthews to come and speak with Haney. Exhibit Folder-Griffin deposition, pp. 17, 19-20; Matthews deposition, pp. 15, 23.

Matthews went to the detoxification cell and found Haney sitting on the floor in the corner, crying. Exhibit Folder-Matthews deposition, pp. 15-16. He told her, "I thought you weren't going to come back in here and get all upset until we found out what was going on [with Hunt]." *Id.* Haney asked if she could borrow $1.50 from Matthews to buy some cigarettes. Exhibit Folder-Matthews deposition, p. 16. Matthews said he would do even better and buy the cigarettes for her if she would behave and not get upset. *Id.*

Haney assured Matthews she would behave, but she told him she wanted to be taken to the city jail. *Id.* Matthews responded that he would see whether such arrangements could be made and left the cell. *Id.* Matthews contacted Roslyn Haygood ("Haygood"), the dispatcher at the city of Cumming Police Department, and inquired whether there was space at the city's jail for Haney. Exhibit Folder-Matthews deposition, pp. 16-17. Haygood told him to bring her on down. *Id.* Matthews then went to the Radio Room and asked the dispatcher to make arrangements for Haney's transport to the city jail. Exhibit Folder-Matthews deposition, p. 17. Matthews also asked that he be advised about Hunt's condition as soon as information was received. *Id.*

Matthews returned to Haney's cell with the cigarettes and told her he would give her the cigarettes if she would

"promise and shake [his] hand that [she] won't do anything funny now, and to cause them no problems. Okay?" Exhibit Folder-Matthews deposition, p. 47; R2-68-Affidavit of Russell Matthews, ¶7, hereinafter "Matthews Affidavit." Haney responded, "Okay." *Id.* Haney shook Matthews' hand, and he gave her his word that as soon as he heard something on Hunt he would get back to her. *Id.* Lastly, Haney asked for another cup of coffee, which she was given. *Id.*

Matthews told the jailer (Griffin) he believed Haney "would be OK now", and that he (Griffin) should notify Matthews when he heard something about Hunt. Exhibit Folder-Griffin deposition, p. 44; Matthews deposition, p. 17. Griffin thought nothing further about the statement Haney had made earlier, and Griffin had no further contact with Haney. Exhibit Folder-Griffin deposition, pp. 20, 41. Matthews then went to lunch; that was the last he ever saw of Haney. *Id.*

At approximately 12:16 p.m., Haney arrived at the city jail. Exhibit Folder-Deposition of William Jeffrey Lowe, p. 15, hereinafter "Lowe deposition." She requested that Haygood call her probation officer and that Haygood check on Hunt's condition at the hospital. Exhibit Folder-Haygood deposition, p. 22. Haney's speech was plain and she was stable; there was nothing out of the ordinary about her. *Id.* at p. 23. Haygood told Haney that her probation officer was on the way to the city jail. *Id.* Haney was then placed in a cell. Exhibit Folder-Haygood deposition, p. 25; Lowe deposition, p. 18.

Shortly after 1:00 p.m., while Haygood was delivering stamps to one of the inmates in the adjoining cell, she noticed that Haney was propped up against the cell bars with her back to the hall. Exhibit Folder-Haygood deposition, p. 36. Haygood looked through the window flap and could see that a sheet was tied around Haney's neck, and she screamed for Officer Buck Jones ("Jones") to check on Haney. Exhibit Folder-Haygood deposition, pp. 36, 49. Jones went to the cell and, upon opening the door, saw that Haney had a sheet tied around her neck. Exhibit Folder-Haygood deposition, p. 36; Jones deposition, p. 37. Haygood and Jones attempted unsuccessfully to untie the knot in the bed sheet. Exhibit Folder-Jones deposition, p. 37. The custodian at the jail eventually cut the sheet with his pocket knife, and CPR was begun. *Id.* Haney's body was removed from the city jail at approximately 2:08 p.m. None of these facts are in dispute in this case.

ARGUMENT

Rule 10 of the rules of this Court sets forth the basis upon which a writ of certiorari may be granted. The rule reads in pertinent part:

> Review on writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

> (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; . . . .
>
> . . . .
>
> (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

Sup. Ct. R. 10.

Respondents have assumed, based upon the content of the petition for writ of certiorari, that subsections (a) and (c) of Rule 10 are relied upon by petitioners in support of the instant petition. Apparently, petitioners contend that the Eleventh Circuit, by reversing the district court's denial of qualified immunity to Matthews and Griffin, "has entered a decision in conflict with the decision of another United States court of appeals on the same important matter" and "has decided an important federal question in a way that conflicts with relevant decisions of this Court." Sup. Ct. R. 10 (a) and (c). That question seemingly is whether and to what extent jailers in 1996 have duties under the Eighth and Fourteenth Amendments to provide for the serious medical and psychological needs of inmates in their custody. (Petition for Writ of Certiorari, p. i.) However, that question was not the one addressed by the Eleventh Circuit. Rather, in determining Matthew's and Griffin's entitlement to qualified immunity, the Eleventh Circuit focused only on what

law was clearly established on *April 21, 1989*. (Petition for Writ of Certiorari, Appendix A, pp. 10a-12a.)

In *Rice v. Sioux City Memorial Park Cemetery*, 349 U.S. 70 (1955), this Court discussed the dimensions of its discretionary review and why cases, such as this one, are not among those for which such review will be granted.

> [W]e have considered anew whether this case is one in which "there are special and important reasons" for granting the writ of certiorari, as required by Supreme Court Rule 19, 28 U.S.C.A.
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> * * *
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> A federal question raised by a petitioner may be "of substance" in the sense that, abstractly considered, it may present an intellectually interesting and solid problem. But this Court does not sit to satisfy a scholarly interest in such issues. Nor does it sit for the benefit of the particular litigants . . . "Special and important reasons" imply a reach to a problem beyond the academic or episodic. This is especially true where the issues involved reach constitutional dimensions, for then there comes into play regard for the Court's duty to avoid decision of constitutional issues unless avoidance becomes evasion.

Rice, 349 U.S. at 74 (citations omitted).

Applying the rationale of the *Rice* decision to this case, there can be no doubt that this case is not one presenting "special and important reasons" as required by Rule 10 (formerly Rule 19). Instead, the Court has been asked to decide a question of law not argued by the parties or decided by the courts below and not dispositive of this case in any event.

This case does not involve the alleged denial of *medical care* to Haney. Indeed, petitioners recognize as much at page 4 of their petition when they assert that Matthews and Griffin "were deliberately indifferent to Haney's serious need for psychiatric care." (Petition for Writ of Certiorari, p. 4.) Nor does this case involve the question of what duties jailers owe to inmates in April, 1996. With respect to the question of qualified immunity, the only issue is whether, as of April 21, 1989, the law governing the conduct of officers under the circumstances in question was clearly established. The Eleventh Circuit's determination that it was not does not conflict with prior decisions of this Court or of other courts of appeals.

A. The Eleventh Circuit's decision does not conflict with this Court's decision in *Estelle v. Gamble*, 429 U.S. 97 (1976).

At pages 12 through 15, petitioners attempt to demonstrate that the Eleventh Circuit's ruling "is directly in conflict with the principal (sic) established in *Estelle v. Gamble* [429 U.S. 97 (1976)]." (Petition for Writ of Certiorari, p. 15.) Petitioners contend that *Estelle* clearly established that "prison officials who are deliberately indifferent to the medical and psychological needs of an inmate are not entitled to qualified immunity." (Petition for Writ of Certiorari, p. 12.) Respondents submit that petitioners misstate the import of *Estelle* and overstate its holding and applicability to the facts of this case.

Estelle involved a claim by a state prisoner (Gamble) that he had been denied adequate medical care for his

back injury. Gamble was not suicidal or in need of psychiatric treatment, and the Court did not discuss that issue. Instead, this Court noted that, in the context of an Eighth Amendment claim, the government had an "obligation to provide medical care for those whom it is punishing by incarceration." *Estelle*, 429 U.S. at 103. In rendering its decision, this Court evaluated only the conduct of Dr. Gray, the state corrections department medical director. It did not discuss the actions of the defendants who were not physicians, because the Fifth Circuit did not separately consider those defendants' actions. *Estelle*, 429 U.S. at 108.

Thus, several facts distinguish *Estelle* from this case. *Estelle* involved a claim of inadequate medical treatment. This case does not. The Court's discussion of deliberate indifference in *Estelle* focused on the actions of a medical professional. Neither Matthews nor Griffin is a physician. The Eleventh Circuit's decision in this case is not at odds with *Estelle*.

Petitioners blatantly mischaracterize the Eleventh Circuit's decision as holding that present-day jailers are not required to provide any medical or psychiatric care to inmates under any circumstances. (Petition for Writ of Certiorari, p. 14.) Furthermore, their suggestion that the Eleventh Circuit permits (or ever permitted) jailers to allow inmates to bleed to death is without any support, either in the *Haney* decision or otherwise, and is wholly irrelevant to the question before this Court. (*Id.*)

Furthermore, *Estelle* did not serve to clearly establish the applicable law governing the conduct of respondents

Matthews and Griffin in April of 1989. Qualified immunity shields government officials performing discretionary functions from civil damages "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Qualified immunity is available to government officials whose "actions could reasonably have been thought consistent with the rights they are alleged to have violated." *Anderson v. Creighton*, 483 U.S. 635, 638 (1987). The rights at issue must have been clearly established *in light of pre-existing law* so that "a reasonable official would understand that what he is doing violates that right." *Anderson*, 483 U.S. at 640 (emphasis supplied). "[T]he qualified immunity defense . . . provides ample protection to all but the plainly incompetent or those who knowingly violate the law." *Malley v. Briggs*, 475 U.S. 335, 341 (1986). Thus, a court's inquiry is focused on the "objective legal reasonableness" of the official's actions, and it looks to whether a reasonable official could have believed his or her conduct to be lawful in light of clearly established law and the information possessed by the official *at the time the conduct occurred*. *Anderson*, 483 U.S. at 640-41.

Respondents submit that *Estelle* did not serve to clearly establish the rights at issue in this case in April, 1989. Haney was not in need of medical attention, although petitioners contend she needed psychological/psychiatric care. Matthews and Griffin were not physicians, unlike Dr. Gray. To require Matthews and Griffin, or any similarly-situated law enforcement officers, to determine their obligations with respect to a potentially

suicidal inmate based on a reading of this Court's decision in *Estelle* would stand the principle of qualified immunity on its head and eviscerate its very purpose.[2]

B. The Eleventh Circuit's decision does not conflict with decisions of the First, Fifth or Eighth Circuits as to whether the law was clearly established in April, 1989.

Petitioners next try to obtain review by this Court by arguing that the Eleventh Circuit's decision in this case conflicts with the decisions of the First, Fifth and Eighth Circuits. (Petition for Writ of Certiorari, pp. 21-22.) That is, petitioners imply that the applicable law *was* clearly established in the First, Fifth and Eighth Circuits as of April 21, 1989. A brief look at each of the four (4) cases cited by petitioners demonstrates that petitioners' contention in this regard is not well-founded.

Unlike many of the cases cited by petitioners, *Rellergert v. Cape Girardeau County, Mo.*, 924 F.2d 794 (8th Cir. 1991), *did* involve the suicide of an incarcerated inmate. (Petition for Writ of Certiorari, p. 21.) While the Eighth Circuit concluded that the law was clearly established *in February, 1991* that "jailers must take measures to prevent inmate suicide once they know of the suicide

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[2] Nor do this Court's decisions in *Farmer v. Brennan*, ___ U.S. ___, 114 S.Ct. 1970 (1994), and *Helling v. McKinney*, 509 U.S. ___, 113 S.Ct. 2475 (1993), impact on the Eleventh Circuit's decision, because, *inter alia*, these cases involve vastly different facts (inmate assaults and exposure to second-hand tobacco smoke, respectively) and were decided years after Haney's death. (Petition for Writ of Certiorari, p. 19.)

risk," it stated that the law was *not* clearly established as to what those measures were required to be. "[T]here are no hard and fast parameters and . . . each case turns on its own peculiar facts." *Rellergert*, 924 F.2d at 797. Respondents submit that the decision in *Rellergert* is in accordance, rather than in conflict, with the Eleventh Circuit's decision in this case.

Consolo v. George, 58 F.3d 794 (1st Cir. 1995), cited by petitioners at page 21 of their petition, involved a claim by an arrestee that there was deliberate indifference to his *medical* needs (broken bones) during 1990. There, the First Circuit stated that it had been clearly established since at least 1983 that a pre-trial detainee is entitled to medical attention for serious medical needs. Certainly, this decision does not demonstrate any conflict between the First and Eleventh Circuits, because the case now before the Court does not deal with alleged medical needs – it deals with alleged psychiatric needs.

In *Stokes v. Delcambre*, 710 F.2d 1120 (5th Cir. 1983), also cited at page 21, an inmate brought suit for physical injuries he received at the hands of fellow inmates who assaulted him. The dissimilarity between the facts in *Stokes* and the facts in this case is obvious.

Finally, petitioners cite *Hare v. City of Corinth*, 74 F.3d 633 (5th Cir. 1996). (Petition for Writ of Certiorari, pp. 21-22.) That case, decided subsequent to the Eleventh Circuit's decision herein, dealt with a suicide that occurred in July, 1989. Significantly, the Fifth Circuit in *Hare* noted that its prior approach to claims of failure to protect from harm had been unclear and "peripatetic," and stated that its goal in deciding the case was "to

clarify our case law and to articulate the proper legal measures of a State's duty to tend to a pretrial detainee posing a risk of suicide." *Hare*, 74 F.3d at 643. Respondents submit that the court in *Hare* was doing what it recognized it had not done before – clearly establishing the law in the Fifth Circuit regarding the constitutional duty owed a potentially suicidal inmate. If this did not occur until 1996, the applicable law in the Fifth Circuit could not have been clearly established in 1989.

Petitioners either misunderstand the significance of the Eleventh Circuit's decision or they are intentionally twisting it into something that it is not. The one and only question addressed and answered by that court is this: Was it clearly established on April 21, 1989 that officers who fail to notify competent authorities and take appropriate action regarding an inmate's possible psychiatric needs could be liable under 42 U.S.C. § 1983? (Petition for Writ of Certiorari, Appendix A, pp. 10a-11a.) None of the decisions cited by petitioners at pages 21-22 of their petition bear upon this question. Petitioners contrived "conflict" between the Eleventh Circuit and other courts of appeals is nothing more than that.

In the final analysis, petitioners are not seeking a review by this Court of the Eleventh Circuit's ruling in this case. What they are seeking to obtain is an academic ruling as to the state of the present-day law in the hopes that they can get a chance to present their arguments as to "what the law should be" to a jury. Respondents submit such a goal is not among the "special and important reasons" for which review on certiorari was designed.

CONCLUSION

The petition for writ of certiorari should be denied in this matter, because the justiciable concerns required by Rule 10 of the rules of this Court are not present. There is no need for this Court to decide the broad question presented by petitioners, because such a decision is not needed to resolve the case now before this Court. An examination of the facts of this case and the applicable law is all that is needed. Petitioners' attempt to transform this case into something that it is not should be rejected.

Accordingly, the petition for writ of certiorari should be denied.

Respectfully submitted,

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